

THE ROLE OF SMALL BUSINESS IN THE  
AIR TRANSPORTATION INDUSTRY: THE  
FEDERAL AVIATION ADMINISTRATION

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A REPORT  
OF THE  
SUBCOMMITTEE ON ACTIVITIES OF REGULATORY  
AGENCIES  
OF THE  
COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES

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OCTOBER 1, 1976.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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WASHINGTON : 1976

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## LETTERS OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, D.C., October 1, 1976.*

HON. CARL ALBERT,  
*The Speaker, House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: Transmitted herewith is a report of the Subcommittee on Activities of Regulatory Agencies entitled "The Role of Small Business in the Air Transportation Industry: The Federal Aviation Administration."

This report is submitted with the approval of the full Committee.  
With kindest regards and best wishes, I am,  
Very sincerely yours,

TOM STEED,  
*Chairman.*

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U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES,  
*Washington, D.C., October 1, 1976.*

HON. TOM STEED,  
*Chairman, Committee on Small Business, House of Representatives,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: Transmitted herewith is a report of the Subcommittee on Activities of Regulatory Agencies entitled "The Role of Small Business in the Air Transportation Industry: The Federal Aviation Administration."

The report, transmitted to you as Chairman of the Committee on Small Business, has the approval of the Subcommittee.

Sincerely yours,

JOHN BRECKINRIDGE,  
*Chairman.*

# LETTERS OF TRANSMITTAL

TO THE HONORABLE SENATE OF THE UNITED STATES  
FROM THE SECRETARY OF THE INTERIOR  
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE  
ON FEBRUARY 2, 1890  
RELATIVE TO THE LANDS BELONGING TO THE UNITED STATES  
AND THE PROCEEDINGS OF THE COMMISSIONERS OF THE GENERAL LAND OFFICE  
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## CONTENTS

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	Page
Chapter I. Introduction.....	1
Purpose of the hearings.....	2
Chapter II. Sectors of the industry covered by the hearings.....	2
A. FAA.....	2
B. Commuter Airlines.....	3
C. Rotor-Aids, Inc.....	4
D. Los Angeles Helicopter Airlines.....	4
E. Great Western Airlines.....	4
Chapter III. Findings and conclusions.....	4
A. Procurement.....	4
B. Specific areas of concern developed.....	5
C. Other Matters.....	12
Chapter IV. Recommendations.....	15
Appendix—Hearings held by the subcommittee on CAB/FAA matters....	17



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## Union Calendar No. 872

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94TH CONGRESS } <i>2d Session</i>	HOUSE OF REPRESENTATIVES {	REPORT No. 94-1750
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### THE ROLE OF SMALL BUSINESS IN THE AIR TRANSPORTATION INDUSTRY: THE FEDERAL AVIATION ADMINISTRATION

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OCTOBER 1, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. STEED of Oklahoma, from the Committee on Small Business, submitted the following

### REPORT

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Union Calendar No. 872

Report of the Committee on the Administration of the Government, House of Representatives, 74th Congress, 2d Session, No. 94-1750

THE ROLE OF SMALL BUSINESS IN THE AIR TRANSPORTATION INDUSTRY: THE FEDERAL AVIATION ADMINISTRATION

Ordered, June 1, 1935.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STEARNS of Oklahoma, from the Committee on Small Business, submitted the following

REPORT

# THE ROLE OF SMALL BUSINESS IN THE AIR TRANSPORTATION INDUSTRY: THE FEDERAL AVIATION ADMINISTRATION

## CHAPTER I. INTRODUCTION

The Committee on Small Business of the United States House of Representatives created six subcommittees at the beginning of the Ninety-Fourth Congress, each of which was given a specific field for investigation. The Subcommittee on Activities of Regulatory Agencies was assigned jurisdiction concerning oversight, investigation and review of all problems affecting small businesses relating to concentration, monopoly and other matters involving regulatory agencies, as well as unfair and deceptive trade practices, advertising techniques, credit regulation, monopolistic practices, and antitrust and anti-competitive practices. Oversight, a key responsibility, was to encompass three areas of concern:

1. Review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within its jurisdiction, and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within its jurisdiction (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within its jurisdiction.

2. Reviewing and studying on a continuing basis the impact or probable impact of tax policies affecting subjects within the jurisdiction.

3. Studying and investigating, on a continuing basis, the problems of all types of small business.

The following Members were appointed to the Subcommittee:

Representative William L. Hungate, Chairman.<sup>1</sup>

Representative Berkley Bedell.

Representative John J. LaFalce.

Representative Martin A. Russo.

Representative Alvin Baldus.

Representative Jack Hightower.

Representative John D. Dingell.

Representative Floyd J. Fithian.

Representative John Y. McCollister, Ranking Minority Member.

<sup>1</sup> Mr. Hungate resigned as Subcommittee Chairman effective September 7, 1976 and was replaced by Representative John Breckinridge of Kentucky.

Representative William S. Cohen.

Representative Millicent Fenwick.

Additionally, Full Committee Chairman Joe L. Evins<sup>2</sup> and Ranking Minority Member Silvio O. Conte were named ex-officio members of the Subcommittee. Stephen P. Lynch was appointed Professional Staff Member to the Subcommittee in the position of Majority Counsel. Later, Jerrold S. Jensen was appointed Minority Counsel to the Subcommittee. Mary Lou Liggon, Jeannie Frederick, and Linda Parker served as Subcommittee clerical assistants.

### *Purpose of the hearings*

At the Subcommittee organizational meeting on March 6, 1975 the Members discussed the various federal regulatory agencies and their relationship to small business. An informal poll of the Members revealed that the three most mentioned agencies were the Civil Aeronautics Board, the Federal Trade Commission, and the Interstate Commerce Commission. During the month of April, staff did some preliminary research on the three agencies. Using this research, the Subcommittee decided to hold a preliminary informational hearing with each agency. The purpose was to find out how each agency operated, identify key personnel, follow each agency's decision-making and rule-promulgating processes, ascertain the extent to which small businesses have input into and/or impact on the agencies, and, if possible, to identify burdensome regulations.

Due to the fact that the Federal Aviation Administration promulgates many regulations in the field of air safety which have significant effects upon small businesses in the air transportation field, it was decided to include the Administration in any CAB investigation. Hearings were then set up to study both the Civil Aeronautics Board and the Federal Aviation Administration simultaneously.

The Subcommittee set out to determine the precise nature of the problems small business firms engaged in various phases of air transportation were encountering. Many laymen would consider air transportation to be essentially a field of large, not small, businesses. This is not the case. Small businesses abound and even dominate in the commuter carrier, freight forwarder, and travel agent sectors.

The growth of air transportation and related industries has been dramatic since air transportation hearings were held by the Committee in 1965 and 1966. The general concern of those hearings can be applied to this Congress as well, "... not only with the welfare of small firms engaged in air transportation and related industries but with the prosperity and efficiency of the entire industry. Basic to both of these is the public interest which we feel can be well served by a prospering and expanding small business sector's contribution."

## CHAPTER II. SECTORS OF THE INDUSTRY COVERED BY THE HEARINGS

### *A. Federal Aviation Administration*

The Federal Aviation Administration was organized under the Federal Aviation Act of 1958 and has operated as one of the model

<sup>2</sup> Mr. Evins resigned as Full Committee Chairman effective August 30, 1976 and was replaced by Representative Tom Steed of Oklahoma on August 31, 1976.



administrations within the Department of Transportation since the Department was organized in 1966. The agency is headed by the Federal Aviation Administrator. Day-to-day operations are decentralized, with eleven regional offices under regional directors within the fifty states, plus a Europe-Africa-Middle East region, which is headquartered in Brussels.

The FAA administers a number of important statutes. Its basic aviation safety regulatory authority is spelled out in the Federal Aviation Act. Its primary function, while it does have others, is to promote and regulate aviation safety.

While the agency has substantial regulatory functions, it is not generally considered one of the regulatory agencies in the sense that the regulatory boards or commissions, such as the Civil Aeronautics Board, Securities and Exchange Commission, and the Federal Power Commission are. These agencies are most significantly concerned with economic-type regulations. Economic regulation of air transportation under the Federal Aviation Act is placed, in fact, in the CAB and not the FAA.

The FAA has significant operational and program functions and responsibilities. These include such functions as procurement, installation, operation, and maintenance of a nationwide system of air navigation facilities; operation of an air traffic control system; the administration of a grant-in-aid program for airport planning and development by state and local government agencies consistent with a national airport system plan prepared by the FAA; development, operation, and administration of the two Washington airports, Washington National and Dulles International; administration of a system for registration of aircraft and recording of aircraft title documents; administration of an aviation war-risk insurance program and aircraft loan guarantee program; and provision of technical training and assistance for international aviation. The Administration's procurement functions are concerned with the research, development, and establishment of air traffic control systems and air navigation facilities.

### *B. Commuter Airlines*

Commuter air carriers operate under authority granted by the Civil Aeronautics Board. Although exempt from Section 401(a) of the Federal Aviation Act of 1958, such carriers are registered with the CAB under Part 298 of its economic regulations. They hold operating certificates issued by the Federal Aviation Administration.

Air taxi operators first began scheduled air services in the 1950's, and in 1969 the CAB created the commuter air carrier industry as it is known today. In that year, the Board issued an order defining a *commuter air carrier* as "an air taxi operator which (1) performs at least five round trips per week between two or more points and publishes flight schedules which specify the times, days of the week and places between which such flights are performed, or (2) transports mail by air pursuant to a current contract with the (U.S. Postal Service).

Commuter aircraft types are FAA tested and certificated as to airworthiness before they can go into service. All are subject to periodic inspections and maintenance under procedures prescribed by the FAA for commercial operators.

Commuter airline pilots are licensed and supervised by the FAA for air carrier operations. They are required to meet FAA physical standards and must undergo recurrent training and a flying proficiency test every six months.

Commuter air carriers are normally found in communities where the population or business activity is not sufficient to support adequate and timely service by the trunk and local service carriers with their large aircraft. Commuters refer to themselves as the pioneers in providing safe, reliable, economical, and timely frequent service (passenger, cargo, and mail) in response to public and community needs.

*C. Rotor-Aids, Inc., Ventura, Calif.*

A corporation with sixty-three employees which for twenty-nine years has been transporting crews and equipment by helicopter to offshore oil platforms.

*D. Los Angeles Helicopter Airlines, Los Angeles, Calif.*

A commuter airline which was an intrastate helicopter operation. Unfortunately, due to various problems, LAHA has gone out of business since their November, 1975 Subcommittee appearance.

*E. Great Western Airlines, Tulsa, Okla.*

A commuter airline experiencing a fuel purchase problem at Pittsburgh International Airport.

### CHAPTER III. FINDINGS AND CONCLUSIONS

#### *A. Procurement*

Due to the activity of the FAA in the procurement area, members of the Subcommittee on Government Procurement and International Trade were invited to sit in on the June 19, 1975 hearing. The Administration has several major procurement functions. At the hearing, witnesses described their procurement policies:

Our major procurement functions are concerned with the research, development, and establishment of air traffic control systems and air navigation facilities.

The FAA has made a concerted effort to aid, counsel and assist small business to insure that a fair portion of our procurements for supplies, service, research, and development are awarded to small business concerns.

Our small business assistance officer who is located in the Headquarters Logistics Service, is responsible for this program. Small business specialists have also been designated for each field procurement office.

They are actively engaged in locating potential small business contractors, both through the Small Business Administration and on their own initiative. They closely review solicitations to insure that small business concerns receive adequate consideration, including initiation of set asides. In

the early stages of a procurement, they insure specifications are available and adequate to permit competition by small business. They review programs for possible breakout of items suitable for small business concerns. These are a sample of our activities in general support of small business.

In addition, as a part of the agency's overall small business assistance effort, a minority business program has been established with a full-time minority business coordinator located in the Headquarters Logistics Service.

Minority business coordinators have also been designated for each field procurement office. As a collateral duty, they are responsible for assisting all segments of the minority business community. They provide information at conferences and in individual interviews about FAA programs. They arrange contact with program offices to facilitate an exchange of information concerning the firms' capabilities and our requirements. Coordinators also assist in reducing the complexity of the contracting process for minority firms by providing liaison between the minority-owned firm and various FAA procurement and program offices, and the Small Business Administration.

The percentage of total procurement dollar awards to small business has steadily climbed from 12.2 percent in fiscal year 1970 to 18 percent in 1971, to 25 percent in 1972, to 29.9 percent in 1973 and in 1974 to 30.5 percent. Translated to dollars, in 1970 the dollar amount awarded to small business was over \$44 million. In 1974 it was over \$81 million.

In concluding these comments on FAA's procurement function, I want to emphasize that we do feel a strong responsibility for making the small business program a success.

During the initial hearing with the FAA, several procurement issues were raised. There was concern that contract disputes often involved lengthy negotiations and tended to be detrimental to the smaller businesses involved and perhaps could even lead to financial collapse. There also were some questions raised concerning the geographic distribution of procurement contracts.

None of these procurement issues arose in later hearings. The procurement jurisdiction within the House Committee on Small Business falls under the Subcommittee on Government Procurement and International Trade. As a result, information assembled on the matter will be forwarded to the Subcommittee for their consideration during the Ninety-Fifth Congress.

### *B. Specific areas of concern developed*

Subcommittee staff, after examination of the testimony from several hearings, identified nine specific areas of concern. On July 28, 1976 representatives of the FAA appeared to respond to the nine areas.

1. Commuter airlines had told the Subcommittee that certain FAA safety regulations were not in accord with CAB economic regulations.

Specifically mentioned was Proposed Rule 76-7. This Rule would permit aircraft weighing more than 12,500 pounds and having a maximum passenger capacity of ten seats or less to operate under Federal Aviation Regulation 135. Commuters want the notice amended to include aircraft having maximum passenger capacity of thirty seats or less.

At the present time, commuters operate aircraft with a certificated gross takeoff weight of 12,500 pounds or less under FAR 135. Once the 12,500 pound limit is exceeded, the commuter comes under more rigid safety regulations. The commuters view the more rigid regulations as economically unfeasible for their circumstances.

FAA officials told the Subcommittee that 76-7 was intended as an interim measure which would allow operational experience with coverage of certain larger aircraft under FAR 135. The knowledge gained would then be applied to future rule-making actions. Regulatory projects are now underway to upgrade 135. In the words of an FAA official:

As conceived, this comprehensive upgrading will include provisions for the operation of aircraft with a seating capacity of up to 30 passengers, with up to a 70,500 pound payload, and a zero fuel weight of 35,000 pounds or less . . . It was the view of the FAA that permitting aircraft with a seating capacity of up to 30 passengers to operate under Part 135 prior to the completion of efforts to upgrade this part, might compromise aviation safety. For this reason, Notice 76-7 restricted seating capacity to 10 passengers rather than 30 passengers.

There was a question concerning the seating capacity number chosen—in this case, ten. Any number would have been arbitrary. The Subcommittee asked the FAA for the history of this number's determination, and the following information was supplied.

The CAB first added the requirement of 30 passengers to Part 298 of their regulations in 1972. Prior to that time, in 1969, the FAA already had in effect Special Federal Regulation 23 in which airworthiness requirements are set forth for certain small aircraft which are intended for operation under Part 135 and which are certificated to carry more than 10 occupants. Additionally, in 1970 the FAA effected an amendment to Part 135 of the Federal Aviation Regulations to require a second in command when an airplane is operated that has a passenger seating configuration of 10 seats or more.

Due to the complexity of the matter, FAA organized a conference specifically to discuss "the total upgrading of Part 135, so that we are positive we are not in any way relaxing our safety standards." The commuters were invited, as was Subcommittee staff. The conference was tentatively scheduled for November 8-12 in Denver, Colorado. Upon Subcommittee request, the Full Committee Chairman approved the attendance of majority and minority counsels, and they will file a report on the conference to the Subcommittee.

2. Commuter airlines expressed concern to the Subcommittee that airports in the nation's smaller communities served by commuter



lines would not get their fair share of F & E funds (facilities and equipment).

The FAA no longer classifies airports as "air commerce" or "general aviation" for facilities and equipment purposes. The FAA now recognizes that commuter lines are different from general aviation. This new recognition is meant to insure that commuter operational statistics will receive greater weight than the same levels of general aviation activity. However, the FAA also told us that since "... certificated air carriers generally carry more passengers per plane than do commuter airlines, and normally have aircraft which would be more costly to replace, cost-benefit analysis techniques result in certificated air carrier operations being valued higher than equivalent levels of commuter airline operations."

In questioning, it was pointed out that privately owned airports are not eligible for funds no matter how many commuter lines use the airport. The rationale for this is simply that "public tax moneys derived from tax sources do the greatest good at publicly owned and operated facilities." If, however, commuters use a certain private airport often, it would seem that there might be some type of "public benefit." The Subcommittee in its hearing, however, was not given any factual evidence of this.

A more serious problem concerns the basis for determining the number of operations required in the funding analysis. The FAA uses the figure of 15,000 movements a year as the baseline for air carrier operations; 25,000 for air taxis (commuters included); and 200,000 for general aviation. A question was raised, "Why don't you do it on the number of passengers?" The FAA responded that this would be too complicated.

While there is no question that the planes of the major air carriers carry many more people and much more cargo than commuter carriers do, what if a major flight takes off with only a few people aboard? All planes are not full.

The FAA feels that they have made a breakthrough in the new classifications. There would seem to be some question, however, on exactly why certain baselines were established, and what their relationship is to passengers carried, if any.

3. The commuters wanted to know what was being done to fund the development of aircraft and engines that can safely and economically serve small communities.

The FAA responded:

The primary responsibility for the development of new aircraft and engine technology rests with NASA, whether for air carrier aircraft serving primarily large communities or general aviation aircraft serving primarily small communities.

The FAA development effort is carried out in support of its regulatory function and is usually oriented toward test and evaluation of hardware developed by industry or NASA. In this regard, we are working jointly with NASA in a program to (1) develop standards which will permit general aviation aircraft to safely meet EPA emission standards for piston and turbine-powered aircraft; (2) develop a means of evalua-

tion and improve the crashworthiness of general aviation aircraft which, through enhancing the safety of general aviation, has a positive effect on small community development; and (3) study means of safely improving the noise characteristics of both turbine and piston engined general aviation aircraft to make them better neighbors in the small community.

Staff inquired, "... What percentage (of hardware) is developed by the industry as opposed to NASA?" The FAA responded: "While we do not have any precise statistics, available information does reflect that industry has done the bulk of engine and airframe development since World War II. The Government role is expected to continue to be the development of the technical data base to permit industry development of improved products."

4. At a field hearing in Los Angeles, some witnesses complained that they were unable to secure appropriate safety publications from the Government Printing Office. They sometimes would have to face FAA inspection without all the required publications.

The FAA responded:

A commuter airline conducting operations under FAR Part 135 is required by section 135.39 to furnish, among other things, an Airman's Information Manual and FAR Parts 91 and 135 to its pilots. Failure to comply subjects the airline to possible enforcement action. Operators may obtain these documents from commercial and other sources if not readily available from the GPO. In recognition of the difficulty experienced by the aviation community in getting safety-critical material from the Superintendent of Documents, the FAA issued Order 1720.29, "Superintendent of Documents Distribution of FAA Safety-Related Publications," on January 28, 1976. This order established a system of monitoring complaints and performing liaison with the Superintendent of Documents to the end that better service to the aviation community may be provided.

5. Commuter airlines told the Subcommittee that they often are given very undesirable locations when they establish themselves at an airport.

The FAA does not question the fact that at some of the nation's airports, the commuters have been given terminal space that is less desirable than other carriers' space. However, the allocation of such space depends upon availability and also negotiations between the management of the airport and the individual carrier. Since most commuters would be the "new boys on the block" at an air terminal, they have to be accommodated wherever space is available. Undoubtedly, at most major air terminals the certificated carriers would have long-standing leases on the most desirable space.

Federally funded airports are bound by grant agreements "to establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport." Thus the FAA must see to it that commuter lines are treated fairly. Any complaints of unfair discrimination are investigated.

6. Rotor-Aids, Incorporated of California told the Subcommittee that the Bureau of the Census had been contracted to conduct a



survey, yet the FAA was already collecting the information. They also annually receive an FAA report even though they are not required to fill it out.

According to the FAA, the special survey was conducted to acquire information not generally available to the FAA for various reasons. There may have been some duplication which was unavoidable. However, the FAA has decided not to ask the Bureau to conduct another survey.

The annual form Rotor-Aids receives, FAA Form 1800-31 Airport Activity Survey (By Selected Air Carriers) is mailed to all air taxi operators. The FAA feels that the information requested is vital to efforts concerning Federal aid to airports program. The reason that the form is sent out to all air taxi operators is that from time to time the nature of a particular air taxi operation may change. Rotor-Aids must determine whether they are to fill out the form. As the FAA said: "What we say is applicable to the air taxi and commercial operators subjected to the passenger tax. If it does not apply, don't send it."

7. Rotor-Aids said that current legislation creates a tax record-keeping nightmare for them. It is almost impossible to figure out what should or should not be taxed.

Although the question actually involved Internal Revenue Service matters and legislation under other Committees' jurisdiction, FAA officials stated:

While we do not wish to hold ourselves out as possessing special expertise in tax law since the IRS is responsible for interpreting the provisions of the Internal Revenue Code, we will attempt to address some of the issues raised by Rotor-Aids.

They state that they have questions regarding the basis (i.e. standby charges, flight hourly charges, or both) upon which to compute the passenger and cargo taxes. The tax law appears to be relatively clear on this point, wherein at sections 4262(d) and 4272(d) of the Internal Revenue Code, it is stated that the term "transportation" includes "layover or waiting time and movement of the aircraft in deadhead service."

Rotor-Aids further states that bookkeeping is aggravated by transportation of both cargo and passengers. We recognize that bookkeeping requirements may become complicated when both cargo and passengers are transported. However, if Rotor-Aids elects to transport both concurrently, they would have to exercise careful bookkeeping practices to determine the taxes to be paid since different rates exist for passengers (8 percent) and cargo (5 percent).

We are unable to respond to Rotor-Aids' question regarding taxability for that portion of their flights occurring over international waters. We suggest that they contact the Internal Revenue Service for a Revenue Ruling on this point.

Finally, with respect to the bookkeeping problems associated with fuel taxes, we note that the Congress clearly considered recordkeeping and expected the aviation fuel tax provisions to simplify such functions. (See House Report

No. 91-601, page 47, where it states, "The special treatment for affiliated groups and small aircraft not on established lines is provided to more efficiently carry out this title's overall approach, i.e., to have the use of aircraft be subject either to the passenger and cargo taxes or else to the fuel taxes, but not to both as to any one trip. Those two categories of aircraft are exempted from the passenger and cargo taxes but are put under the fuel taxes for all their flights. It is expected that this will substantially simplify recordkeeping for those taxpayers and also facilitate administration of the taxes.")

Generally speaking, recordkeeping would be simplified for these operators having aircraft weighing less than 6,000 pounds since they would avoid the more complicated and detailed recordkeeping requirements of the cargo and passenger taxes. However, when an operator has aircraft that weigh less than 6,000 pounds as well as aircraft weighing more than 6,000 pounds, it would appear that bookkeeping procedures would be unavoidably cumbersome.

(The Subcommittee has dealt with the problems outside of FAA jurisdiction in the *Recommendations* section of this report.)

8. Complaints from small air carriers and commuters have come to the Subcommittee concerning the possibility of monopolistic tendencies in the sale and serving of fuel at the nation's airports. A documented case from Pittsburgh was sent to us. The Subcommittee wanted to know: (a) Is Greater Pittsburgh International Airport in violation of FAA policy in regard to use of Federal Airway Development Funds (FAA policy states that competitive services must be available and must be encouraged by airports receiving funds from the Development Fund); and (b) Are landing fees and flow fees both appropriate at these airports since the Development Fund, as we understand it, is largely financed by fuel taxation?

FAA responded:

Section 308(a) of the Federal Aviation Act of 1968, as amended, provides in pertinent part that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

The grant of an exclusive right for the conduct of any aeronautical activity on Federally obligated airports is regarded as contrary to the requirements of applicable laws, whether such exclusive rights result from an express agreement, from the imposition of unreasonable standards or requirements, or by any other such means.

The presence on an airport of only one person engaged in an aeronautical activity will not in and of itself be considered a violation of the exclusive rights policy if there is no intent by express agreement, imposition of unreasonable standards or requirements, or by other such means to exclude others.

We are aware of some airports at which the commuter airlines as well as the charter operators are required to purchase fuel from the Fixed-Base-Operators, often at retail prices. When discriminatory practices are discovered, steps are taken to rectify the situation.

With regard to the Great Western Airlines' complaint against the Greater Pittsburgh International Airport, the Eastern Region of the FAA is presently investigating the allegation. The letter of May 24, from Great Western, was apparently not sent to the FAA, so we were not previously aware of the problem.

The fact that the airport charges both landing fees and flow fees bears no relationship to the consideration that Development Funds are financed by fuel taxation. The rates and charges established by the airport are the prerogative of management and should relate to the costs of doing business. Section 18 of the Airport and Airway Development Act of 1970, as amended, requires the airport operator to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the circumstances existing at the airport. The establishment of unusually high rates, not commensurate with operating costs, and designed to exclude a segment or segments of the aviation community, would not be considered to be within the intent of Section 18 of the Act.

In late August of 1976, the FAA sent the Subcommittee the results of their investigation:

The following is from a letter dated August 13, sent to Great Western Airlines, Inc., by the FAA Harrisburg Airports District Office, Pennsylvania: "This will supplement our acknowledgement communication of June 4, 1976, to your letter of May 24 which related in detail the problems you've experienced purchasing fuel at Greater Pittsburgh International Airport and concluded by directing the following questions to FAA:

1. Is Greater Pittsburgh International Airport in violation in regards to use of Federal Airway Development Funds?
2. Are landing fees and flow fees both appropriate at these airports since the Development Fund . . . is financed by fuel taxation?

In response to your first question, we have reviewed the contract between the County of Allegheny and Beckett Aviation and discussed the background of the problem with all parties concerned, and we conclude that the County of Allegheny is not in violation of commitments with respect to operating the airport. Although Beckett Aviation is presently the only Fixed Base Operator (outside of Allied, which services scheduled air carriers, and GODCO which contracts with international nonscheduled carriers) which can provide fuel to the general public, we have established that your aircraft have been serviced and fueled by Beckett and, as far as we can determine, you are charged for fuel at the same rate by Beckett as anyone else. The County of Allegheny's policy to restrict fueling operations to either fixed base operators or airport tenants is basically sound in that it assures, as much as possible, safe handling and storage practices and again is within their limitations to control.

Concerning your second question, the FAA encourages airport operators to establish fair and reasonable fees for the use of airport facilities. Landing fees are, as you know, a common source of income. Likewise, it is common for an airport owner to include in its FBO contract provision that a portion of payment for the right to conduct the base operation will be based upon a fuel flowage "fee." It is permissible to have both kinds of charges assessed on an airport and there is no inconsistency with federal regulations relating to airports receiving federal funds under the Airport Development Aid Program.

We trust the above satisfactorily answers the questions you have directed to this office. If you have further questions or seek further clarification of these matters, please feel free to contact us.

(The commuters' fuel problem is a serious one. It is discussed at length in this Subcommittee's Civil Aeronautics Board Report and appropriate recommendations are made therein.)

9. Los Angeles Helicopter Airlines complained that rotary wing carriers are denied government guaranteed loan programs for new equipment. They said even if they were federally certificated they would be ineligible.

The FAA is bound by statute in this area. Any company seeking a government guarantee of a private loan for purchase of an aircraft and related equipment must hold a CAB certificate. The statute does not exclude helicopter airlines. The issue is whether or not the operator holds a CAB certificate. The law is plain: no certificate, no loan eligibility.

The issue of certification of commuters is a disputed matter even among commuter carriers themselves. This whole issue, since it is under the jurisdiction of the Civil Aeronautics Board, is discussed in detail in the Subcommittee's CAB report.

### *C. Other matters*

#### *1. Firefighting equipment at Sioux City, Iowa, airport*

The airport at Sioux City, Iowa is now required to have full-time fire protection. Congressman Berkley Bedell, who is from that district and is a Member of the Subcommittee, asked the FAA what procedures are followed in determining such a need. Taxpayers in that community at the time had questioned the advisability of that type of expense. The FAA informed the Subcommittee:

The requirement for certification of airports serving air carriers certificated by the CAB was established by Public Law 91-258 of May 21, 1970. Public Law 91-258 amended the Federal Aviation Act of 1958 by adding a new Section 612 and Subsection 610(a)(8). Under Section 612 as amended, the Federal Aviation Administrator is empowered to issue airport operating certificates to air carrier airports and to establish minimum safety standards for the operation of such airports. Section 610(a)(8) makes it unlawful for any person to operate an airport serving air carriers certificated by the



CAB without an airport operating certificate or in violation of the terms of any such certificate. Section 612 provides that each airport operating certificate shall prescribe such terms, conditions and limitations as are reasonably necessary to ensure safety in air transportation. Section 612 provides further that unless the Administrator determines that it would be contrary to the public interest, "such terms, conditions and limitations shall include but not be limited to terms, conditions and limitations relating to the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any portion of the airport used for the landing, takeoff or surface maneuvering of aircraft."

In promulgating the rules, regulations and standards applicable to airport operating certificates, the FAA conducted a public rulemaking proceeding. It issued an Advance Notice of Proposed Rule Making in September 1970 which elicited a number of public comments and suggestions. During this period, the FAA consulted extensively with airport operators and associations and other persons interested in or potentially affected by the airport certification requirement. This was followed by a Notice of Proposed Rule Making issued in May 1971 which received extensive public comments from airports, airport associations, and other interested persons. These comments were further taken into account and discussed in the preamble to the rule (Part 139 of the Federal Aviation Regulations) which was ultimately issued in June 1972. Subsequent substantive amendments to Part 139 were also accomplished through public rulemaking proceedings.

Part 139, as initially issued, prescribed a requirement for airports receiving scheduled service from certificated air carriers, such as Sioux City, with respect to airport firefighting and rescue equipment and services, among other requirements for airport certification. Under this regulation the amount and type of fire and rescue equipment at a particular airport is determined from a published standard based upon the size and frequency of departures of aircraft used by air carriers at the airport.

... No "hearings" were held with respect to the certification of the Sioux City Airport. But the general provisions apply to Sioux City as an airport serving certificated air carriers. And the FAA reviewed individually the airport operations manual presented by the airport in connection with its application for an airport operating certificate.

While the FAA is aware of the expense issue, they feel such equipment is necessary to properly carry out their responsibility for insuring safety at certificated airports. There is not always advance notice of a fire hazard. In Los Angeles, an airplane was totally consumed by fire before the fire equipment, which was located at the airport, found the plane, due to severe fog conditions. Fortunately, no one was killed in the incident. This example illustrates conditions which would render

community equipment useless, and in this particular case even the airport equipment could not be utilized.

The FAA had been criticized prior to their fire requirement for not requiring such equipment for airports. The primary duty of the agency is safety, and their study indicated that this requirement was needed.

## *2. Definition of small business*

The FAA officials told the Subcommittee that "... although the FAA does give full economic consideration to the economic impact of its safety regulations, it has not had occasion to define the term 'small business' specifically for regulatory purposes." They have defined small business for procurement purposes, since that is done for them by the Small Business Administration. It is the Administration's contention that since their regulations are safety oriented and not economic oriented, it is difficult to characterize the effect on small business in many cases.

This area is one which concerns the Subcommittee very much. In hearings held in this Congress with various federal regulatory agencies, there has appeared a degree of small business recognition. This recognition is somewhat limited, however, and the Subcommittee hopes one result of our various hearings will be to focus even more on not only the existence of various small businesses in an industry, but what effect federal regulation is having upon the continued existence and possible expansion of such businesses. While the regulation discussed here is unique due to the nature of the agency, there perhaps should be some attempt to define small business for regulatory purposes. In doing this, it might well alleviate some problems for the agency as well as the Congress when it comes to an undue regulatory burden. Just one example: the commuters' plight with Proposed Rule 76-7. Recognition of the great burden that would fall upon them as a result of the proposed rule might have come sooner and the period taken to resolve the issue (since at present it is not resolved) could have been shortened.

## *3. Decentralization*

During the discussion of the Great Western fuel problem at the Greater Pittsburgh International Airport, the Subcommittee learned that complaint procedures are organized in a decentralized fashion. Action taken on charges are often handled at the regional and district offices. The majority of the cases never reach Washington. For example, the FAA was unable to tell us how many cases of unjust discrimination they have had, since the complaints are generally received in the field offices and resolved there. Thus, they were not aware of the Great Western problem, nor do they have any idea of how many such problems exist.

The limiting factor in this problem is the availability of manpower. The Subcommittee was concerned that the problems of small business in such a decentralized organization could well be "lost in the shuffle." Former Chairman Hungate noted that, "... considering the amount of money we spend on major airlines; the subsidies they receive . . . we would probably be willing to ask the Appropriations Committee to give you another man or two, to find out what is going on in small business."

An FAA official then told the Subcommittee that his program had already been cut forty positions.



The decentralization of complaints and airport compliance makes it difficult for the FAA or the Subcommittee to determine what small business' problems are on a nationwide basis. The Great Western matter certainly is by no means an isolated incident. The Subcommittee will solicit the Administrator's views on this and ask for any appropriate legislative recommendations.

#### CHAPTER IV. RECOMMENDATIONS

Based upon the testimony, the evidence and the findings, the Subcommittee recommends:

##### A. That the Federal Aviation Administration:

(1) Review its criteria for determining the number of operations required in airport funding analysis with particular emphasis on possibilities for the development of a system which would utilize the number of passengers flown, rather than simply counting basic operations.

(2) Consider the possibility of defining small business for regulatory purposes as it now is already defined for procurement purposes. Included in this consideration should be any legislative proposals deemed appropriate.

(3) Propose possible alternatives which would alleviate its present inability to gather significant statistics in the area of complaints due to decentralization (for example, its inability to tell the Subcommittee how many unjust discrimination complaints such as Great Western's it had last year). Include suggested legislative remedies.

(4) Report to the Committee no later than February 1, 1977 its responses to these recommendations.

##### B. That the Internal Revenue Service:

Review the questions raised by Rotor-Aids concerning what portion of their flights over international waters are taxable, and respond in writing to the Committee no later than December 1, 1976.

##### C. That the Commuter Airline Association of America:

Advise its members of the Great Western case and advise the Committee and the FAA of any significant number of similar fuel purchase problems and other discriminatory complaint problems at the Nations' airports.



## APPENDIX

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### HEARINGS HELD BY THE SUBCOMMITTEE ON CAB/FAA MATTERS

#### DATE, PLACE, AND WITNESSES

June 19, 1975, Washington: FAA officials.

June 26, 1975, Washington: CAB general counsel.

July 29, 1975, Washington: CAB chairman Robson and board member Minetti.

August 29, 1975, Los Angeles, Calif.: Small businesses.

November 12, 1975, Washington: Small businesses.

November 13, 1975, Washington: Small businesses.

February 4, 1976, Washington: Air Traffic Conference.

February 5, 1976, Washington: Small businesses.

July 28, 1976, Washington: FAA officials.

August 4, 1976, Washington: CAB chairman Robson.

August 5, 1976, Washington: CAB chairman Robson.

(17)

















